

## Administrative and Legal Committee

CAJ/82/4

Eighty-Second Session  
Geneva, October 22, 2025

Original: English  
Date: September 25, 2025

## REPORT ON THE WORKING GROUP ON HARVESTED MATERIAL AND UNAUTHORIZED USE OF PROPAGATING MATERIAL (WG-HRV)

*Document prepared by the Office of the Union*

*Disclaimer: this document does not represent UPOV policies or guidance*

### BACKGROUND

1. This report covers the seventh meeting of the Working Group on Harvested Material and Unauthorized use of Propagating Material (WG-HRV).
2. The CAJ, at its eighty-first session, held in Geneva on October 23, 2024, noted the report of the sixth meeting of the WG-HRV<sup>1</sup> and the Addendum to the report<sup>2</sup> and agreed that the Office of the Union commissioned a study to assist in the WG-HRV deliberations on the “Scope of the Breeder’s Right” in Article 14(1) and (2) of the 1991 Act, including the notions of “unauthorized use” and “reasonable opportunity” and the relationship with the “Exhaustion of the Breeder’s Right” in Article 16 of the 1991 Act, in accordance with the approved Terms of Reference.

### SEVENTH MEETING OF THE WG-HRV (MARCH 20, 2025)

3. The WG-HRV held its seventh meeting, on March 20, 2025, by virtual means. The WG-HRV/7 documents and report are available at:  
[https://www.upov.int/meetings/en/details.jsp?meeting\\_id=85866](https://www.upov.int/meetings/en/details.jsp?meeting_id=85866).
4. During seventh meeting of the WG-HRV, the Office of the Union provided background on the study, reiterating that the study was intended to support the work of the WG-HRV on explanatory notes concerning harvested material and the unauthorized use of propagating material, in line with the agreed terms of reference.
5. Mr. Huib Ghijsen, appointed by the authors as coordinator, presented the progress made by the authors (presentation available on the UPOV website, under:  
[https://www.upov.int/meetings/en/details.jsp?meeting\\_id=85866](https://www.upov.int/meetings/en/details.jsp?meeting_id=85866)).
6. The main conclusions of the meeting are summarized below (document WG-HRV/7/3 “Report”, paragraph 12):
  - (a) The final version of the study is to be delivered on September 1st, 2025, as mentioned in the Terms of Reference. The Office of the Union will publish the study on its website as one of the documents to be considered at the eighth meeting of the WG-HRV, on October 22, 2025.
  - (b) The WG-HRV noted the progress made by the authors and took note of the structured approach and coordination in place to meet the study’s objectives.
  - (c) The WG-HRV noted the authors’ intention to first address Article 14 and then consider the relationship with Article 16, as outlined in the terms of reference.

<sup>1</sup> CAJ/81/5, Report on the Working Group on Harvested Material and Unauthorized use of Propagating Material (WG HRV)

<sup>2</sup> CAJ/81/5 Add., Addendum Report on the working group on harvested material and unauthorized use of propagating material (WG-HRV)

- (d) The WG-HRV reaffirmed that the study is to provide an analysis of the intentions of the drafters of the 1991 Act and that UPOV members are not bound by the content and/or conclusions drawn by the authors in the study.

EIGHTH MEETING OF THE WG-HRV (OCTOBER 22, 2025)

7. The WG-HRV will hold its eighth meeting in Geneva, on October 22, 2025, by hybrid means. The WG-HRV/8 documents will be available at: [https://www.upov.int/meetings/en/details.jsp?meeting\\_id=88391](https://www.upov.int/meetings/en/details.jsp?meeting_id=88391).

8. The CAJ is invited to note that, with Circular E-25/053 of September 11, 2025, the WG-HRV was informed that the authors of the study requested to postpone the delivery date of the final version of the study to December 15, 2025, as the scope of the study, particularly the review of the history of the development of Articles 14 and 16 of the 1991 Act, was extensive and the collection and analysis of material required more time than initially anticipated.

9. It was agreed that the authors will be ready to deliver a final version of the study on December 15, 2025, to the Office of the Union. The study will be made available to the WG-HRV in January 2026, giving the members time to consider the final version of the study before the ninth meeting of the WG-HRV, foreseen to take place in March 2026, date to be confirmed. The updated Terms of Reference of the Study are reproduced in the Annex to this document.

*10. The CAJ is invited to note the developments concerning the work of the WG-HRV, as reported in this document.*

[Annex follows]

TERMS OF REFERENCE OF THE STUDY ON THE "SCOPE OF THE BREEDER'S RIGHT" AND THE  
RELATIONSHIP WITH THE "EXHAUSTION OF THE BREEDER'S RIGHT"  
*as approved by the WG-HRV, at its sixth meeting, and amended by Circular E-25/053*

SCOPE:

The study to include:

- a first part with an analysis of the intentions of the drafters of the 1991 Act of the UPOV Convention in relation to the "Scope of the Breeder's Right" in Article 14(1) and (2) of the 1991 Act, including the notions of "unauthorized use" and "reasonable opportunity" and the relationship with the "Exhaustion of the Breeder's Right" in Article 16 of the 1991 Act; and
- a second part with summaries of relevant court cases from UPOV members bound by the 1991 Act.

COMPOSITION:

The study should be carried out by the five authors mentioned below. The authors should agree on one of them to be coordinating their work.

The working language of the authors should be English and the study should be drafted in English.

<b>Experts (alphabetic order)</b>
Mr. Huib Ghijzen
Ms. Vivianne Kunisawa
Mr. Charles Lawson
Mr. Axel Metzger
Mr. Joseph Straus

MODUS OPERANDI:

Independence:

The authors are independent in drafting the study, in the sense that the authors should not receive individual instructions from anyone and that the authors should be impartial and objective.

The five authors should draft one study and should follow a collaborative working method following academic standards. Following such standards, the authors should manage potential different perspectives or analysis and, if applicable, how such matters should be reflected in the study.

Having received the study, it is up to the WG-HRV to consider a possible follow-up and to request further guidance from the CAJ, as appropriate.

UPOV members are not bound by the content and/or conclusions drawn in the study.

Timeline:

The authors will be asked to deliver the draft study by latest September 1, 2025, for consideration at the eighth meeting of the WG-HRV, on October 22, 2025. The final version of the study to be delivered by latest December 15, 2025.

Financial support:

55,000 Swiss Francs which would include:

- Honorarium of 10,000 Swiss francs for each of the 5 authors.
- Travel expenses up to 5,000 Swiss francs in total for the 5 authors. The purpose of the travel could be to convene a meeting amongst the authors or to support travel to come to Geneva to present the findings of the study or any other unforeseen travel expenses.

The overall estimation of the cost to be shared as follows: UPOV regular budget would cover 30,000 Swiss francs and the Funds-in-Trust Agreement between the Government of Japan and UPOV (JP-FIT) would cover 25,000 Swiss francs.

[End of Annex and of document]